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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,542	03/16/2004	Konstantinos Roussos	67272-8060.US01	3726
77042	7590	03/04/2009	EXAMINER	
Perkins Coie LLP			JEAN, FRANTZ B	
P.O. Box 1208				
Seattle, WA 98111-1208			ART UNIT	PAPER NUMBER
			2454	
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			03/04/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/802,542	ROUSSOS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Frantz B. Jean	2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 November 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4-12,19-22,24-28 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-12,19-22,24-28,30-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

This office action is in response to applicant's arguments filed on 11/25/08. Claims 1, 4-12, 19-22, 24-28, and 30-34 are pending in the application. Claims 31-34 have been added.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 4-12, 19-22, 24-28, 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander, III et al. hereinafter Alexander US patent number 6,513,155 in view of Murstein et al. (hereinafter Murstein) US patent number 6,789,046. As per claim 1, Alexander teaches a method comprising: automatically discovering counter that collects data describing activity of a performance object within a host offering networked storage services to a set of clients over a network; wherein the performance object is a logical or physical subsystem of the host (fig 18; col 11 lines 45-50; collecting data for the performance object from the in the counter group templates and outputting the data to a storage medium (col. 20 lines 35-47; col. 14 lines 13 et seq). However, Alexander does not explicitly detail on defining a counter group templates, for collection of the data describing the activity of the performance. Murstein is directed to monitoring, gathering and aggregating performance metrics. The system comprises predefining time period at a plurality members for one or more performance metrics

(see abstract; col. 2 lines 15-65; fig 5). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Murstein predefining counter group to Alexander's system because it would facilitate quick and accurate review of performance objects. One ordinary skill in the art at the time of the invention would be motivated to do so to quickly find problems or determine a state of an object, thereby increasing Alexander's system performance and reliability (see col. 1 line 60 to col. 2 line 14).

As per claim 4, Alexander-Murstein teaches automatically discovering performance object ... (col. 24 lines 17-30).

As per claim 5, Alexander-Murstein teaches instantiating the selected counter based on predefined mapping of the performance object to the counter (Murstein abstract and summary of invention).

As per claim 6, Alexander-Murstein teaches storing the collected data for the counters in each two or more counter group templates separately for the host (Murstein abstract and summary of invention; fig 5).

As per claims 7-8, Alexander-Murstein teaches allowing a user to select one of a plurality of predefined views and presenting data to the user, in accordance with selected view (see Alexander fig 18).

As per claim 9, Alexander-Murstein teaches automatic discovering and data collecting are performed in parallel (Alexander col. 24 lines 17-21).

As per claims 10-12, they contain the same limitations as discussed above in claims 1 and 4-9, therefore, they are rejected under the same rationale.

As per claims 19-22, 24-28, 30-33, they contain the same limitations as discussed above in claims 1 and 4-12. Therefore, they are rejected under the same rationale.

Furthermore, Alexander-Murstein teaches a processor (202,204) and a memory (208, 209).

As per claim 34, Alexander-Murstein teaches displaying sample data for the counter using a view associated with the counter, the view containing a configuration for presenting the collected data (see Murstein fig 1, 6, and 9 (monitor)).

### ***Response to Arguments***

Applicant's arguments filed on 11/25/08 have been fully considered but they are not persuasive.

Applicant argued that Alexander-Murstein does not teach or suggest the claimed limitations to "a counter that collects data describing activity of a performance object within a host offering networked storage services to a set of clients over a network ....

wherein the performance object is a logical or physical subsystem of the host."

Examiner submits that Alexander is directed to an event-based trace data that is recorded in response to selected event. Furthermore, Murstein is directed to monitoring , gathering and aggregating performance metrics. The combination of both references broadly and clearly teaches the invention as claimed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantz B. Jean/  
Primary Examiner, Art Unit 2454